

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN A. HUNTER,

Plaintiff,

v.

CNA GROUP LIFE ASSURANCE
COMPANY,

Defendant.

CASE NO. C04-969JLR

ORDER

I. INTRODUCTION

This matter comes before the court on Plaintiff John Hunter and Defendant CNA Group Life Assurance Company's ("CNA") cross-motions for review of the administrative record (Dkt. ## 12, 13). Hunter seeks an order reversing CNA's termination of disability benefits, compelling back payment of benefits from CNA since May 30, 2003,¹ and awarding prejudgment interest on any unpaid benefits. CNA, on its own motion, asks the court to uphold its decision denying Mr. Hunter long term disability benefits. Having read and considered the papers filed in support of and opposition to these motions, and having heard oral argument, the court DENIES both motions and orders a bench trial.

¹CNA paid Mr. Hunter a conditional benefit through May 30, 2003.

II. BACKGROUND

Mr. Hunter is a 60 year-old man who worked as a construction superintendent for many years before quitting work due to recurring problems with rheumatoid arthritis, irritable bowel syndrome, diverticulosis, and depression. CNA 058.² Upon leaving work, Mr. Hunter applied for disability benefits under his employer's Group Long Term Disability Policy ("the Plan"), which is governed by the Employee Retirement Income Security Act ("ERISA"). The Plan provides disability benefits for any "*Injury or Sickness*" that "causes physical or mental impairment to such a degree of severity" that the beneficiary is "continuously unable to perform the *Material and Substantial Duties* of *Your Regular Occupation*," and is "not *Gainfully Employed*." CNA 021 (emphasis in original). The Plan requires objective medical findings to support a beneficiary's claimed disability which include, but are not limited, to "tests, procedures, or clinical examinations standardly accepted in the practice of medicine." CNA 034. If the administrator denies the beneficiary's claim for disability benefits, the administrator must provide a written denial letter (1) stating the specific reasons and plan provisions underlying the denial, (2) describing any additional information required, and (3) explaining the appeal process. CNA 042. The Plan also requires a "full and fair" review of a benefits denial. *Id.*

Mr. Hunter applied for disability benefits in December 2002 and submitted medical documentation from multiple doctors to support his claim. As part of his application, Mr. Hunter included a "Physician's Medical Certification of Illness/Injury" from his long-time treating psychiatrist, Dr. John Petrich, indicating that he suffered from depression and was incapacitated "due to pain and exhaustion." CNA 334. Dr. Petrich

²All record citations are to the administrative record provided by the parties.

1 noted that Mr. Hunter attended monthly psycho-therapy sessions and took medication for
2 his depression. Id. At CNA's request, Dr. Petrich also completed a "Medical
3 Assessment Tool" describing Mr. Hunter's primary diagnosis as major recurring
4 depression and secondary diagnosis as chronic inflammation of the joints and bowel
5 disease. CNA 290. Dr. Petrich listed Mr. Hunter's estimated return to work as
6 "uncertain – severely handicapped." Id. Additionally, Dr. Petrich attached office notes
7 to the assessment tool and consultation reports from Mr. Hunter's monthly psycho-
8 therapy sessions.
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10 According to internal documents from CNA, a registered nurse reviewed Mr.
11 Hunter's psychiatric claim in February 2003 and concluded that "from [a] psychiatric
12 point of view" the medical evidence did not "support restrictions." CNA 081. The
13 disability claims representative handling Mr. Hunter's claim noted the nurse's finding in
14 his review a week later and concluded that the "information made available to date does
15 not appear to substantiate [claimant's] inability to perform his regular occupation." CNA
16 080. CNA never sought additional information regarding Mr. Hunter's depression claim
17 or asked a psychiatrist to review his mental health condition. Instead, CNA requested
18 that its consulting physician and internist, Dr. Truchelut, review Mr. Hunter's disability
19 claim. CNA 207. Although Dr. Truchelut concluded that from a "physical standpoint
20 only, it is not clear if there are any restrictions which are supported by these medical
21 records," he explicitly refrained from assessing Mr. Hunter's disability claim from a
22 mental standpoint based on his inability to "assess the claimant's psychiatric disorder."
23 Id.
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26 On June 19, 2003, CNA issued a written letter denying Mr. Hunter's disability
27 claim because the information provided did not substantiate a continuous inability to
28 perform the material and substantial duties of his job as a construction superintendent.

1 CNA 060. CNA concluded that the information contained in the file revealed that Mr.
2 Hunter was able to “engage in activities that meet or exceed those involved in your
3 position and the medical information reveals essentially normal findings.” *Id.* CNA did
4 not request additional information from Mr. Hunter regarding any of his conditions,
5 including his depression claim.

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7 Mr. Hunter appealed the denial of his benefits claim and submitted additional
8 medical information, including a statement from Dr. Petrich indicating that his chronic
9 depression worsened prior to leaving work and that Dr. Petrich told him to stop working
10 based on his increased physical pain and aggravated depression. Fjelstad Decl. at 2.
11 CNA reviewed Dr. Petrich’s statement and concluded that it provided “no additional
12 medical evidence” to support Mr. Hunter’s disability claim. CNA 062. CNA upheld its
13 original decision, issuing a second denial letter on March 10, 2004 and explaining that
14 “the totality of the medical evidence,” including Dr. Petrich’s statements, “could not be
15 correlated to a total occupational restriction.” CNA 056. Mr. Hunter subsequently
16 initiated this suit against CNA for breach of fiduciary duty under 29 U.S.C. § 1132.
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18 III. DISCUSSION

19 A. Legal Standard

20 A plan administrator’s denial of benefits under an ERISA-governed plan “is to be
21 reviewed under a de novo standard unless the benefit plan gives the administrator or
22 fiduciary discretionary authority to determine eligibility for benefits or to construe the
23 terms of the plan.” *Jordan v. Northrop Grumman Corp. Welfare Benefit Plan*, 370 F.3d
24 869, 874 (9th Cir. 2004) (quoting *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101,
25 115 (1989)). If the plan administrator possesses discretionary authority, the court will
26 review the benefits denial under an abuse of discretion standard and affirm the denial
27 unless it is “arbitrary and capricious.” *Id.* at 875. A decision grounded on “any
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1 reasonable basis” is not arbitrary or capricious. Id. (quoting Horan v. Kaiser Steel Ret.
2 Plan, 947 F.2d 1412, 1417 (9th Cir. 1991) (emphasis in original) (citation omitted)).
3 Further, the court must affirm a plan administrator’s finding that a claimant is not
4 disabled unless it is “clearly erroneous.” Id. (quoting Jones v. Laborers Health & Welfare
5 Trust Fund, 906 F.2d 480, 482 (9th Cir. 1990)).

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7 Assuming the Plan confers discretionary authority on its administrator, the court
8 will apply an abuse of discretion standard of review unless a “serious” conflict of interest
9 warrants heightening the standard of review to de novo. Id. To receive de novo review,
10 the beneficiary must provide “material, probative evidence, beyond the mere fact of the
11 apparent conflict,³ tending to show that the fiduciary’s self-interest caused a breach of the
12 administrator’s fiduciary obligations to the beneficiary.” Id. at 875-76 (quoting Atwood
13 v. Newmont Gold Co., 45 F.3d 1317, 1323 (9th Cir. 1995)). A “serious” conflict of
14 interest exists where the plan administrator (1) provides inconsistent reasons for the
15 benefits denial, (2) provides insufficient reasons for the benefits denial, or (3) denies the
16 claim based on procedural irregularities in the processing of the claim. Nord v. Black &
17 Decker Disability Plan, 356 F.3d 1008, 1010 (9th Cir. 2004).

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19 If the beneficiary produces “material, probative evidence” of a serious conflict of
20 interest, then the burden shifts to the plan administrator to rebut the presumption of self
21 interest by producing evidence “that the conflict of interest did not affect the decision to
22 deny benefits.” Friedrich v. Intel Corp., 181 F.3d 1105, 1109 (9th Cir. 1999) (quoting
23 Atwood, 45 F.3d at 1323). The plan administrator’s failure to produce such evidence will
24 result in the court reviewing the benefits decision de novo. Id. Where genuine issues of
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27 ³An apparent conflict of interest exists where “the insurance policy is both issued and
28 administered by the same party.” Jordan v. Northrop Grumman Corp. Welfare Benefit Plan, 370
F.3d 869, 875 (9th Cir. 2004). CNA concedes that an apparent conflict exists.

1 material fact exist regarding the claimant's entitlement to benefits, the district court must
 2 conduct a bench trial unless remand is appropriate.⁴ E.g., Tremain v. Bell Indus., Inc.,
 3 196 F.3d 970, 979 (9th Cir. 1999); Kearney v. Standard Ins. Co., 175 F.3d 1084, 1094
 4 (9th Cir. 1999). At trial, the district court may appoint an independent medical expert to
 5 help evaluate the medical evidence and consider evidence outside the administrative
 6 record⁵ where "additional evidence is necessary to conduct an adequate de novo review of
 7 the benefit decision." Walker v. Am. Home Shield Long Term Dis. Plan, 180 F.3d 1065,
 8 1070 (quoting Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan, 46 F.3d
 9 938, 944 (9th Cir. 1995)).

11 **B. De Novo Review**

12 The Plan language provides the appropriate starting point for determining the
 13 correct standard of review in a benefits denial case under ERISA. Walker, 180 F.3d at
 14 1068. Here, the Plan unambiguously confers discretionary authority on the plan
 15 administrator, providing in relevant part:

17 The plan administrator and other plan fiduciaries have discretionary
 18 authority to determine *Your* eligibility for and entitlement to
 19 benefits under the Policy. The plan administrator has delegated *sole*
 20 *discretionary authority* to Continental Casualty Company to
 21 determine *Your* eligibility for benefits and to interpret the terms and
 22 provisions of the Policy.

23 ⁴Remand provides the proper course "when an ERISA plan administrator, with discretion
 24 to apply a plan, has misconstrued the Plan and applied a wrong standard to a benefits
 25 determination." Saffle v. Sierra Pac. Power Co. Bargaining Unit Long Term Disability Income
Plan, 85 F.3d 455, 461 (9th Cir. 1996); see also, Mongeluzo v. Baxter Travenol Long Term
Disability Benefit Plan, 46 F.3d 938 (9th Cir. 1995).

26 ⁵The evidence considered by the court in its de novo review "need not be admissible
 27 according to the strict rules for the admissibility of evidence in a civil trial, but may be considered
 28 . . . so long as that evidence is relevant, probative, and bears a satisfactory indicia of reliability."
Tremain v. Bell Indus., Inc., 196 F.3d 970, 979 (9th Cir. 1999).

1 CNA 040 (emphasis added). Mr. Hunter's contention that the Plan fails to confer
2 discretionary authority on the administrator lacks merit. The Plan provides the
3 administrator with "sole discretionary authority" to determine benefits eligibility and
4 interpret the Plan. Courts have held that plans with similar language confer discretionary
5 authority. E.g., Jordan, 370 F.3d at 875 (providing plan administrator with "discretion to
6 construe and interpret the terms of the Plan and the authority and responsibility to make
7 factual determinations"); McDaniel v. Chevron Corp., 203 F.3d 1099, 1107 (9th Cir.
8 2000) (providing plan administrator with "sole discretion to interpret the terms of the
9 Plan"); Friedrich, 181 F.3d at 1110 n.5 (providing plan administrator with "sole
10 discretion to interpret the terms of the Plan and to determine eligibility for benefits.>").
11 Thus, the court must apply an abuse of discretion standard of review unless a "serious"
12 conflict of interests exists heightening the standard of review to de novo. Id.

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14 Mr. Hunter contends that a "serious" conflict of interest exists based on a number
15 of reasons, including CNA's alleged failure to consider his depression claim and engage
16 in a dialogue with him, its reliance on an allegedly inaccurate job description, and
17 rejection of Mr. Hunter's treating physicians' diagnoses. The court finds that CNA's
18 failure to consider Mr. Hunter's disability claim based on depression, as required under
19 the Plan and ERISA, demonstrates that CNA operated under a "serious" conflict of
20 interest, warranting de novo review.⁶ The Plan provides, consistent with ERISA, that any
21 claim denial will include a written explanation, including a "description of any additional
22 information [the claimant] might be required to provide and explanation of why it is
23 needed." CNA 042. Similarly, ERISA requires plan administrators to include a
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27 ⁶As a result, the court need not consider Mr. Hunter's additional bases allegedly evincing a
28 "serious" conflict of interest.

1 description of “any additional material or information necessary for the claimant to
2 perfect the claim and an explanation of why such material or information is necessary” in
3 a benefits denial letter. 29 C.F.R. § 2560.503-1(g)(1)(iii). “[I]f the plan administrators
4 believe that more information is needed to make a reasoned decision, they must ask for
5 it.” Booton v. Lockheed Med. Benefit Plan, 110 F.3d 1461, 1463 (9th Cir. 1997).

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7 Here, CNA denied Mr. Hunter’s disability claim based on depression despite
8 evidence from Dr. Petrich that Mr. Hunter suffered from major recurring depression, was
9 “severely handicapped,”⁷ and should stop working due to increased physical pain and
10 aggravated depression. CNA 290; Fjelstad Decl. at 2. CNA never sought additional
11 information from his treating physician clarifying his diagnosis or mental limitations.
12 Further, CNA never sought the opinion of a mental health professional while reviewing
13 Mr. Hunter’s claim of depression. Indeed, it appears from the record that the only CNA
14 healthcare provider that reviewed Mr. Hunter’s claim was a registered nurse, in contrast
15 to Dr. Truchelut, CNA’s consultant and internal medicine specialist, who reviewed Mr.
16 Hunter’s rheumatoid arthritis, irritable bowel syndrome, and diverticulosis claims.
17 CNA’s denial of Mr. Hunter’s disability claim based on depression, without any
18 psychiatric evidence in the record to the contrary, constitutes “material, probative
19 evidence” of a serious conflict of interest. Nord, 356 F.3d at 1010; contra Jordan, 370
20 F.3d at 877-78 (concluding “serious” conflict of interest did not exist where plan
21 administrator sought additional explanatory information from beneficiary’s treating
22 physicians about her condition and had trained specialists review beneficiary’s medical
23 history).
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27 ⁷It is unclear from the record whether Dr. Petrich’s statement that Mr. Hunter is “severely
28 handicapped” refers to his mental and/or physical condition. CNA 290.

1 In response, CNA argues that Mr. Hunter did not claim disability due to
2 depression, and that even if he did, he failed to submit any objective medical evidence to
3 substantiate his claim. Neither argument satisfies CNA's burden to bring forth sufficient
4 evidence to rebut the presumption that the "serious" conflict of interest did not affect its
5 decision to deny benefits. Friedrich, 181 F.3d at 1109. CNA conceded at oral argument
6 that Mr. Hunter's disability claim included depression. E.g., CNA 055, 058 (CNA's
7 denial letters acknowledging disability claim due to depression).

9 CNA's alternative argument, raised for the first time in this litigation, lacks merit.
10 CNA argues that Mr. Hunter failed to submit objective medical evidence of disability due
11 to depression, such as test results from the WAIS-R, the WRAT-3, the Mental Status
12 Checklist, the Bender Gestalt Test, Beck's Depression Inventory, Symptom Checklist 90-
13 R, and the Rotter Incomplete Sentences Test. Yet, CNA never requested formal testing or
14 suggested that it was required. CNA's denial letters are devoid of any reference to Mr.
15 Hunter's alleged failure to support his depression claim with "objective medical
16 evidence" or formal test results, despite the Plan and ERISA requirement compelling plan
17 administrators to describe any additional information "necessary for the claimant to
18 perfect the claim." 29 C.F.R. § 2560.503-1(g)(1)(iii); CNA 042. Although Dr. Petrich
19 offers only terse statements regarding Mr. Hunter's mental condition, his statements
20 provide the only psychiatric evidence in the record and qualify as objective medical
21 evidence supporting a disability claim under the Plan. CNA 034 ("Objective medical
22 findings include but are not limited to tests, procedures, or clinical examinations
23 standardly accepted in the practice of medicine"). Consequently, the court finds that
24 CNA has failed to satisfy its burden to produce evidence rebutting the presumption of
25 self-interest and will review Mr. Hunter's disability claim de novo on a bench trial.
26 Walker, 180 F.3d at 1071 ("remand for a bench trial is now required if there is 'a genuine
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1 issue of material fact as to whether [the party seeking disability benefits under ERISA] is
2 disabled in the sense defined by the policy.””) (quoting Kearney, 175 F.3d at 1093).

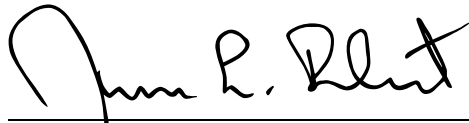
3 Based on the limited psychiatric evidence in the record of Mr. Hunter’s
4 depression, the court finds that “additional evidence is necessary to conduct an adequate
5 de novo review of the benefit decision.” Walker, 180 F.3d at 1070 (quoting Mongeluzo,
6 46 F.3d at 944). The parties may conduct discovery and submit additional evidence at
7 trial regarding Mr. Hunter’s depression claim only. The administrative record contains
8 sufficient evidence of Mr. Hunter’s rheumatoid arthritis, irritable bowel syndrome, and
9 diverticulosis claims.
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11 IV. CONCLUSION

12 Given that a genuine issue of material fact exists for trial, the court DENIES the
13 parties’ cross-motions for review of the administrative record (Dkt. ## 12, 13) and orders
14 a two-day bench trial to commence on August 18, 2005. The clerk is directed to issue a
15 scheduling order establishing the appropriate deadlines.
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17 Dated this 18th day of May, 2005.

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JAMES L. ROBART
United States District Judge